

FREDERICK COUNTY PLANNING COMMISSION

Meeting Minutes

October 20, 2010

Commission Members Present:

Richard Floyd

Kai Hagen, BoCC Liaison

Robert Lawrence

John McClurkin, Secretary

Robert White

Audrey Wolfe

Commission Members Absent: Catherine Forrence

Planning Staff Present:

Mark Depo, Deputy Director, Div. of Planning

Jim Gugel, Chief Planner, Planning

Shawna Lemonds, Project Manager, Planning

Kathy Mitchell, Asst. County Attorney

Eric Soter, Director, Div. of Planning

Betsy Smith, Deputy Director, DPDR

6:00 P.M.

EVENING SESSION

CHAIR WHITE BROUGHT THE MEETING TO ORDER AT 6:00 P.M.

ZONING TEXT AMENDMENT

- a. **Planned Development District (ZT-10-04)** –A public hearing will be held regarding the text amendment. The text amendment is intended to organize and standardize text within the floating zoning districts, delete the existing Mixed Use Development (MXD) and Planned Unit Development (PUD) floating zoning districts, create the Planned Development Residential (PDR) and Planned Development Employment (PDE) floating zoning districts, and edit cross references throughout the County Code.

Findings/Recommendations:

At the September 21, 2010 meeting the BoCC reviewed the draft and voted unanimously to forward the text amendment to public hearing.

Although Staff supports the text amendment as proposed, it is recognized that through implementation there may be edits and updates identified that improve the adopted text, the approval process, and ultimately the resulting projects. In general, as the zoning ordinance update moves forward it may be necessary to re-visit previously adopted text to identify issues and needed improvements. The Division of Planning and the Division of Permitting and Development Review continue to work together to identify these issues, and edits for future examination.

Staff recommends that the Planning Commission recommend approval of the Planned Development Districts Text Amendment (ZT-10-04).

Staff Presentation:

Shawna Lemonds presented the Staff Report, providing an overview of the text amendment and highlighted the differences between the version being presented compared to the version presented during a work session held on June 16, 2010. The following changes were made to the following sections as referenced in the Staff Report Exhibit #1:

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- APPROVAL CRITERIA, as a point of clarification edits were made in order for the criteria to be met as part of the application process as opposed to prior to the application for example on page 16, §1-19-10.500.3 (E), the language now states “The Transportation system is or will be made adequate...”.
- On page 17, REVIEW AND APPROVAL PROCEDURES, §1-19-10.500.4 (D)(2), Language was added to address Adequate Public Facilities Ordinance (APFO) approval within the text amendment.
- On pages 24 and 27, §1-19-10.500.6 AND §1-19-10.500.7 LAND USE , MIXTURE, AND DESIGN REQUIREMENTS WITHIN THE PDR AND PDE DISTRICTS, the Planning Commission is permitted to establish the setbacks and height as part of the PDR and PDE approval.
- On page 30, § 1-19-10.500.9 GENERAL DEVELOPMENT STANDARDS WITHIN THE PLANNED DEVELOPMENT DISTRICTS, the Planning Commission has the ability to modify the General Development Standards and the design criteria that are set within the text amendment specifically the parking loading, landscaping , buffering , screening requirements with some justification.

Mr. Soter mentioned to the Planning Commission that there are cross references to the APFO, FRO, and the Subdivision Regulations throughout the text amendments and for the Commission’s motion and decision to include those references.

Discussion:

Mr. Lawrence questioned whether Staff has a definition for the term “neighborhood” as related to the requirement of conducting a neighborhood meeting and whether Staff has considered further notification options.

Mr. Soter stated there have been several discussions related to defining “neighborhood” but difficulties arise when attempts are made to define neighborhood too specifically. As a result, it has been purposely left out with the plan to address and determine at the time of the each applicants scoping meeting with Staff.

Ms. Lemonds added that in addition to the informal neighborhood meeting, a floating zone is subject to the zoning map amendment process which includes a formal notification that is referenced in §1-19-3.110.3 and includes posting of signs and a mailing.

Mr. Floyd commented that when MXD’s were first instituted, a residential component was part of that requirement but over time was eliminated along with other features due to developer complaints and text amendment changes.

Ms. Lemonds stated that the PDE standards remain the same for mixture requirements as what they are in the MXD today. However, there is language in the text amendment that requires a residential component within the PDE District (intended to have a mixture of residential, commercial and employment), for properties with the MXD land use designation. In addition, for properties with the Limited Industrial (LI) or Office/Research Industrial (ORI) land use designation, residential is only permitted where it is identified within the community and corridor plans.

Mr. White expressed concern about integration of residential and commercial uses in building types and the Planning Commission’s lack of authority or ability to enforce the requirement.

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Mr. Soter raised concern of requiring integration at this level and stated it would not be appropriate. It is the purpose and intent of the community and corridor plans to help inform that. As Staff, in working with the developers would proceed through the community and corridor plans and if there are parcels that are identified to include integration then it should be specifically called out in that plan and made to comply with those requirements as the plan moves forward. He stressed the importance of having a code that permits it but that is flexible to facilitate and not necessarily to always mandate.

Referencing page 26, §1-19-10.500.7 (E), Ms. Wolfe questioned the intent of the language which states "...Any change in the amount or percentage mix of Commercial, and/or residential development of a PDE Project having Phase I approval, must be approved by the Board of County Commissioners as a New Phase application" and questioned whether there is any consideration given that there could be an unforeseen circumstances or conditions that would require a change Phase II.

Ms. Lemonds stated the language is intended to give the Planning Commission flexibility to move a portion of an overall land use component but not the ability to change the percentage land use mix of the overall development.

Mr. Soter added that the reasoning is because the percentages are set by resolution by the Board of County Commissioners (BoCC) at the time of rezoning. When resolutions are written and approved by the BoCC, the amounts are stated as the maximum with the assumption that lesser amounts are acceptable. They become part of the rezoning conditions and can only be changed or increased by going back through the phase I and the resolution amendment process.

Mr. Lawrence commented that the term "change" in the language as Staff described it is not clear.

Additional questions related to the Planning Commission's ability to give modifications as provided in § 1-19-10.500.9, Ms. Lemonds stated it was the BoCC's specific request to permit the Planning Commission (FcPc) to make modifications as permitted within the Zoning Ordinance, however the modifications are limited to those currently provided within Article 6 or as otherwise stated in the floating zone text.

Referencing Division 6, Mr. Lawrence questioned why MXD and PUD were not stricken through to be deleted, and replaced, like other parts of the text.

Ms. Lemonds stated that there are still some existing projects out there and the language is being left to reflect those regulations that may be applied to existing projects that have not yet completed the process. Staff has stricken MXD and PUD language, where applicable, but have left it where it may be needed in the future.

Public Comment:

Jason Wiley, Elm Street Development, representing the Land Use Council

MOTION: Mr. Lawrence made a motion for favorable recommendation of the proposed Text Amendment.

Mr. White requested amending the motion to include not only the text amendment with regard to the Planned Development Districts but also the associated amendments to the APFO, FRO, Subdivision Regulations, and the MPDU Ordinances.

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Mr. Lawrence accepted the amendment and agreed to amend his motion. The amended motion was 2nd by Mr. Floyd.

Lawrence/2nd Floyd - Approved 5-0-1-1

Yeas-5 (Lawrence, Floyd, White, Wolfe, McClurkin), Nays-0, Abstain- 1 (Hagen), Absent- 1 (Forrence)

Mr. White made a motion recommending;

1. That the Planning Commission be given some level of flexibility in the integration requirements in the text amendment.
2. Add the use of pavement types including pervious pavement into the paving section as something that can be required by the Planning Commission.
3. Future examination and evaluation of current MPDU regulations, but not as part of the text amendment.

Mr. Lawrence requested amending the motion to include:

4. Review the language of 1-19-10.500.7 (E) to address the concern that the proposed text does not allow the FCPC to modify the PDR/PDE approved amount or percentage mix of commercial and/or residential development due to unforeseen circumstances arising during the Phase II application.

Mr. White accepted the amendment and agreed to amend his motion. The amended motion was 2nd by Mr. Lawrence.

White/2nd Lawrence - Approved 5-0-1-1

Yeas-5 (White, Lawrence, Floyd, Wolfe, McClurkin), Nays-0, Abstain- 1 (Hagen), Absent- 1 (Forrence)

BREAK AT 6:48 P.M., THE MEETING RESUMED AT 7:00 P.M.

PATH - 765kV TRANSMISSION LINE

- a. **PATH- 765kV Transmission Line**- Staff will be presenting an overview of the proposed PATH 765 kV transmission line for the Planning Commission's review and recommendation.

Mr. White announced that the session was not a public hearing but rather a review of information. Public comment would be allowed per the regular rules of procedure.

Staff and Committee Findings/Recommendations:

The review of electric transmission lines of 69 kV or greater is described in the Frederick County Zoning Ordinance, Section 1-19-4.110 Exemption of Essential Services, which such a proposal to be submitted to the County Planning Commission for its review and recommendation.

The Planning Commission's "review and recommendation" of the proposed transmission line the Commission should primarily focus on potential physical impacts, existing land use impacts, and on impacts to future development or community facilities. Any recommendation could include mitigation recommendations for particular impacts.

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- Even though the transmission line would not be subject to the Forest Resource Ordinance (FRO) it could be recommended to have Allegheny Power provide some degree of mitigation for the 172 acres of forestland that would be removed.
- Have Allegheny Power cooperate with the Landsdale developers and the State Highway Administration in the design of the MD 75/80 intersection.

The Planning Commission's comments and recommendation will be forwarded to the Board of County Commissioners (BoCC). The recommendations and any other comments will also be forwarded to the Public Service Commission (PSC) as part of the review.

Staff Presentation:

Jim Gugel presented the Staff report along with a PowerPoint presentation displaying data of the alternative route plan options within Frederick County as identified by Allegheny Power in the form of maps and a Line Route Evaluation and Environmental Report submitted as part of the Applicant's application. The alternate routes within the Applicant's report identified as Alternate Route N, Alternate Route O, and Alternate Route P were assessed with regard to impacts on the following factors:

- Hydrology- Stream Crossing and wetlands
- Conservation Lands- Agricultural preservation easements, parkland
- Historic Resources
- Habitat or rare, threatened and endangered species
- Development- residence, schools, churches
- Scenic and Recreational Resources-trail crossings, recreation areas
- Transportation- Road crossings
- Topography- slopes 20%
- Land Cover-forested, agricultural land

Discussion:

Mr. White questioned whether there was any consideration on the part of the Applicant of co-location.

Mr. Gugel stated Allegheny Power has described other situations where the co-location method has been used but that Staff is unaware of the level of which this method was considered as an option by the Applicant in this project. He added that a major factor that the Applicant may emphasize for not supporting the option would be reliability issues.

The option of underground installation was as brought up by several Planning Commission members.

Mr. Gugel explained that additional right-of-ways would be required and there may be a situation where they may not necessarily share the right-of-way on an existing line. He added that with the underground installation, there would be a lesser impact on the forest which would normally require 200 ft. clearance, but there would be some degree of an additional right-of-way. And he stated that any large landscape features and vegetation, with the exception of grass, on top of the underground line area would need to be cleared.

Mr. Floyd mentioned the significant financial burden on the Applicant to implement the underground installation of the lines.

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There was discussion among the Planning Commission regarding each of the alternate routes and associated impacts of each. It was noted that Alternate N was the Applicant's preferred option.

There was consensus among the Planning Commission that they were not in favor of any of the three alternatives presented.

Applicant:

The Applicant was not present.

In response to the Applicant's absence, Mr. Gugel stated that there appeared to be an awareness of the meeting date based on the numbers in attendance. Although, the Applicant had not followed up with confirmation of this review hearing, Mr. Gugel noted the Applicant was not required to appear and did not have a specific application for this part of the process. Staff used their material submitted to the Public Service Commission (PSC), which is typical in the part of Staff for transmission line reviews.

Public Comment

Peggy Kaplan, Representing Sugarloaf Conservancy

Doug Kaplan

Chad Baker

Nick Carrera

Esther Brinkman

Sandy Lytle

Dick Ishler, Representing C. A. K. E. S. (Citizens Against the Kemptown Electric Substation, Inc.)

Christopher Tkacik

Barbara Luchsinger

Peter Luchsinger

Ginny MacColl

Janine Borofka

Patrick Forster

BREAK AT 9:08 P.M., THE MEETING RESUMED AT 9:17 P.M.

Martha Turlik

Lorena Seipp

Jason Wiley

Brent Simmons

Anita Venner

Tamar Osterman, Representing the Frederick County Association of Realtors

Stephen MacKintosh

Anthony Aellen

Patience Wait

Karen Newman

Paulette Bunker

Dave Fenstermacher

MOTION: Mr. Floyd made a motion recommending the Proposal is inconsistent with the 2010 County Comprehensive Plan referencing the following issues and impacts as set forth in all testimony heard:

- Adverse scenic impacts on Sugarloaf Mountain
- Would impact more residences that appears to be documented in the line Route Evaluation Report

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- Runoff impacts are not addressed
- Overall need of the project is questioned
- Recommend full mitigation of the 172 acres of forestland proposed to be removed

Mr. Lawrence requested amending the motion adding the following issue:

- Adverse impacts on property values.

Mr. Floyd accepted the amendment and agreed to amend the motion. The amended motion was 2nd by Mr. Lawrence.

After some discussion between the Planning Commission and Staff, the Planning Commission reached consensus to not add any additional points to the motion.

Floyd/2nd Lawrence - Approved 5-0-1-1

Yeas-7 (Floyd, Lawrence, White, Wolfe, McClurkin), Nays-0, Abstain- 1 (Hagen), Absent- 1 (Forrence)

BEING NO FURTHER BUSINESS, THE MEETING ADJOURNED AT 10:27 P.M.

Respectfully Submitted,

Robert White, Chair

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